

## **DETAILED ACTION**

### ***Election of Species***

Applicant's election without traverse of Species I in the reply filed on 5/5/10 is acknowledged. The Applicant contends that claims 1-8, 10, 11 and 14-16 are readable thereon, however claims 7 and 8 define structure (i.e., an "end of stroke abutment" 112a) that is not present in Species I. Accordingly, claims 1-6, 10, 11 and 14-16 are considered to read on elected Species I and will be examined herein. Claims 7-9, 12, 13 and 17 are considered to be non-elected and hereby withdrawn from further consideration.

### ***Specification***

The disclosure is objected to because of the following informalities:

In paragraph 0025, on line 3 it appears that "end 28" should be --head 28—in order to render this phrase consistent with the remainder of the specification (see, for example, line 4 of paragraph 0025); and

In paragraph 0026, on line 6 it appears that "mechanism 1" should be --mechanism 16--.

Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: The term "closed profile" (see claim 15) does not have antecedent basis in the specification.

***Claim Rejections - 35 USC § 112***

Claims 1-6, 10, 11 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the phrase "and/or" (see line 10) renders the claim indefinite in that the metes and bounds of the claim have not been clearly defined.

Further in regard to claim 1, the phrase "so that the drive element is inaccessible" (see lines 7-8) is not accurate, i.e., as the end wall is considered to be part of the drive element (see lines 4-5 of paragraph 0025) and the end wall 32 is always accessible (i.e., the end wall can be contacted by a user regardless of the position of the lipstick tube 24), at least a portion of the drive element (i.e., the end wall) is never "inaccessible". Further, the phrase "an end wall and a drive element" (see lines 5-6) is inaccurate in that, as discussed above, the end wall is defined as being part of the drive element. For example, this limitation could read "...a drive element having an end wall...".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz et al. (U.S. Patent 5,720,379, hereinafter Schwartz).

In regard to claim 1, Schwartz discloses a device including a tubular sheath 12 defining an ejection axis and an axial ejection direction, a moving subassembly 24 mounted to move relative to the sheath and having an end wall 30 and a "drive element" (the vertically extending sidewalls marked as element 28, see Figure 1) wherein the moving subassembly, when in a stowage position (see Figure 2) is received entirely within the sheath so that the drive element is inaccessible, a space defined in the sheath and/or the moving subassembly and a locking means 68 which, when in a locking state, prevents movement of the moving subassembly and, in an unlocking state, releases the moving subassembly to enable movement of the subassembly in the ejection direction until it reaches a projecting position (see Figure 3) in which the drive element projects outside of the sheath and is accessible and wherein the locking means moves from the locking state (Figure 2) to the unlocking state when the end wall 30 is pushed in the axial direction (see column 4, lines 35-47) that is opposite from the axial ejection direction, from the stowage position to a pushed in position. It is noted that statements of intended use, i.e., "for receiving the substance" and "for dispensing cosmetics" do not lend any patentable structure to the claims. Further, the Schwartz device is capable of being used to dispense cosmetic from a space as described in claim 1.

In regard to claim 2, the subassembly moves in translation when pushed in without any movement in rotation relative to the sheath.

In regard to claims 3 and 4, a compression spring 88 drives the moving subassembly as claimed.

In regard to claim 5, a braking means 22, 26 brakes the movement of the moving subassembly.

In regard to claim 11, the locking means includes a moving element 80, 82 co-operating with an abutment 36 wherein movement of element 80, 82 includes a non-axial component as claimed.

In regard to claim 14, the locking means includes a cam mechanism 80, 82 which disengages from the abutment as claimed.

In regard to claim 15, the cam is considered to have a "closed profile".

In regard to claim 16, the sheath is closed by an end wall 18 and has an opposite opening that is closed off by the end wall 30 as claimed.

### ***Allowable Subject Matter***

Claims 6 and 10 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Goos reference is cited for disclosing another pertinent structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
6/10/10

/David J. Walczak/  
Primary Examiner, Art Unit 3751

